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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES LORAN QUINN,

Plaintiff,

v.

FRESNO COUNTY SHERIFF, et al.,

Defendants.

Case No. 1:10-cv-1617 LJO BAM

ORDER ON THE PARTIES' MOTIONS IN
LIMINE

(Docs. 211 & 212)

Now pending before the Court are the parties' motions in limine. Having reviewed the parties' submissions, the Court rules on the motions in limine as follows.

A. Plaintiff's Motions in Limine

Plaintiff's motion in limine is not a proper motion in limine; instead, it is a motion that seeks reconsideration of the Court's ruling on the parties' prior motions for reconsideration. This motion in limine is therefore DENIED. See Mindlab Media, LLC v. LWRC Int'l, LLC, Case No. CV 11-3405-CAS (FFMx), 2013 U.S. Dist. LEXIS 55948, at *6 (C.D. Cal. April 15, 2013) ("A motion in limine is not the proper vehicle by which to seek reconsideration."). Also, the Court stands by its prior ruling on this matter. (Doc. 197.)

B. Defendants' Motions in Limine

1. Indemnification

Defendants seek to preclude Plaintiff from soliciting or presenting evidence regarding Officer Alanis's indemnification for damages by the County of Fresno. Plaintiff does not oppose this motion

1 in limine. This motion in limine is thus GRANTED. See Larez v. Holcomb, 16 F.3d 1513, 1518 (9th
2 Cir. 1994) (“It has long been the rule in our courts that evidence of insurance or other indemnification
3 is not admissible on the issue of damages[.]”).

4 **2. References to Prior Trial**

5 Defendants seek to preclude Plaintiff from referring to the prior trial, including, but not limited
6 to, references to the prior trial’s verdict or damages award. To the extent that testimony from the prior
7 trial is used solely for impeachment purposes, which Defendants note may be appropriate, Defendants
8 request that the parties be precluded from mentioning that the testimony was made during a prior trial;
9 instead, Defendants propose that the parties simply refer to the testimony as “prior sworn statements”
10 or “prior sworn testimony.”

11 Plaintiff does not oppose this motion in limine. The motion in limine is therefore GRANTED.
12 To the extent that the parties wish to use testimony from the prior trial for impeachment purposes, they
13 shall refer to the testimony as simply “prior sworn testimony.”

14 **3. Intent, Motive, or State of Mind**

15 Defendants seek to preclude Plaintiff from offering evidence concerning Officer Alanis’ intent,
16 motive, or state of mind, with an exception for any facts that he was aware of at the time he authorized
17 Plaintiff’s arrest. Defendants maintain that the only matter to be retried is whether Officer Alanis had
18 probable cause to arrest Plaintiff, and that any evidence of intent, motive, or state of mind is irrelevant
19 to determining probable cause.

20 This motion in limine is DENIED. As an initial matter, the Court agrees with Defendants that
21 the only claims to be retried are those that hinge upon the issue of probable cause. Pursuant to Federal
22 Rule of Civil Procedure 59, a court may grant a new trial on only “some” of the issues presented in the
23 first trial. Fed. R. Civ. P. 59(a)(1). A partial new trial may be ordered if the issue to be retried is “so
24 distinct and separable from the others” such that trial of that sole issue may be had “without injustice.”
25 Gasoline Products Co., Inc. v. Champlin Refining Co., 283 U.S. 494, 500 (1931); Pumphrey v. K.W.
26 Thompson Tool Co., 62 F.3d 1128, 1133 (9th Cir. 1995). Here, in granting Defendants a new trial, the
27 Court only discussed and took issue with the jury’s finding regarding probable cause. (See Doc. 197.)
28 Therefore, the only claims to be retried are those that are interwoven with the jury’s determination of

1 probable cause: false arrest, false imprisonment, violation of California Civil Code section 52.1, and
2 negligence.¹ Plaintiff’s claim for intentional infliction of emotional distress will *not* be retried because
3 the jury found for Defendants on that claim on grounds that are completely separate and distinct from
4 probable cause. (See Doc. 167 at 9.)

5 With that said, the Court cannot say at this time that evidence of Officer Alanis’ intent, motive,
6 or state of mind is completely irrelevant to this action. Plaintiff seeks punitive damages. In order to
7 recover punitive damages under his claim for false arrest under 42 U.S.C. § 1983, Plaintiff must show
8 that Officer Alanis’ conduct was “motivated by evil motive or intent” or involved “reckless or callous
9 indifference to the federally protected rights of others.” Smith v. Wade, 461 U.S. 30, 56 (1983). Also,
10 to recover punitive damages under his state law claims, Plaintiff must show that Officer Alanis acted
11 with “oppression, fraud, or malice.” Cal. Civ. Code § 3294(a). Therefore, even if evidence of intent,
12 motive, or state of mind is irrelevant to determining *probable cause*, such evidence is still pertinent to
13 the issue of *punitive damages*. See Ricketts v. City of Hartford, 74 F.3d 1397, 1411-12 (2d Cir. 1996)
14 (evidence of intent admissible to establish punitive damages for underlying claim of excessive force,
15 which is otherwise an objective inquiry).

16 Finally, the Court disagrees with Defendants that this evidence should be excluded pursuant to
17 Federal Rule of Evidence 403. Careful jury instructions, not wholesale exclusion of evidence, is the
18 appropriate way to ameliorate any prejudice that might arise from this evidence.

19 **4. Offers of Proof**

20 Defendants seek to preclude Plaintiff from offering evidence concerning any alleged offers of
21 proof of Plaintiff’s innocence. Defendants maintain that post-arrest offers of proof are irrelevant as to
22 whether Officer Alanis had probable cause to arrest Plaintiff. Defendants also argue that any offers of
23 proof would be overly prejudicial to them.

24 This motion in limine is DENIED for the same reasons discussed above. Even if evidence of
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26 ¹ The Court cannot say that Plaintiff’s negligence claim is completely separate and distinct from the
27 jury’s determination of probable cause. It is true that the jury awarded Plaintiff zero damages on this
28 claim, but it is unclear whether that was simply because the jury was attempting to apportion damages
between the various claims they found in favor of Plaintiff. Absent clarity on this matter, Plaintiff’s
claim for negligence must be retried. See Gasoline Products Co., 283 U.S. at 500.

1 alleged offers of proof are irrelevant to determining probable cause, such evidence may be relevant to
2 the issue of punitive damages. To the extent that Defendants are concerned that the jury will confuse
3 the two issues, any confusion can be clarified by carefully crafted jury instructions.

4 **5. Dr. Khoi Le**

5 Defendants seek to preclude Plaintiff's non-retained expert, Dr. Khoi Le, from testifying and
6 offering opinions at trial. Defendants note, as an initial matter, that Dr. Le's testimony must be limited
7 to his percipient knowledge since he was not retained by Plaintiff as an expert and has not submitted a
8 corresponding expert report pursuant to Federal Rule of Civil Procedure 26(a)(2)(B). Defendants go
9 on to argue that Dr. Le's percipient knowledge is limited to Plaintiff's treatment for an atrial flutter in
10 June 2009, yet that matter is irrelevant to this action.

11 This motion in limine is DENIED. In the Ninth Circuit, "[a] treating physician is only exempt
12 from Rule 26(a)(2)(B)'s written report requirement *to the extent that his opinions were formed during*
13 *the course of treatment.*" Goodman v. Staples the Office Superstore, LLC, 644 F.3d 817, 826 (9th Cir.
14 2011) (emphasis added). Stated differently, to the extent that a treating physician intends to offer an
15 opinion formed outside the course of his treatment, the opinion must be disclosed in an expert report
16 under Rule 26(a)(2)(B). Failure to do so will result in the opinion being excluded from trial unless the
17 opposing party is able to show that the failure was substantially justified or is harmless. Fed. R. Civ.
18 P. 37(c)(1); Goodman, 644 F.3d at 826.

19 Here, Dr. Le did not submit an expert report under Rule 26(a)(2)(B). But even assuming that
20 Dr. Le's opinions do go beyond those formed during his treatment of Plaintiff, his failure to provide an
21 expert report appears to be harmless. Although Defendants do not clearly specify which opinions they
22 take issue with, it appears that they are mainly concerned with Dr. Le's opinions regarding the causal
23 connection between Plaintiff's arrest and atrial fibrillation. Yet this subject was discussed in Dr. Le's
24 deposition, and to the extent that Defendants believed that they needed additional discovery or rebuttal
25 witnesses to counter Dr. Le's opinions, Defendants had sufficient time under the scheduling order to
26 do so. And while it is Plaintiff's burden to show harmlessness, see Torres v. City of Los Angeles, 548
27 F.3d 1197, 1213 (9th Cir. 2008), it is worth noting that (1) in the prior trial Defendants did not object
28 to Dr. Le's opinions on this issue; and (2) even now Defendants do not offer any suggestions as to why

1 or how they have been harmed by the absence of an expert report from Dr. Le. Therefore, under these
2 particular circumstances, the Court concludes that any failure by Dr. Le in providing an expert report
3 under Rule 26(a)(2)(B) is harmless.²

4 As for the relevancy of Dr. Le's treatment of Plaintiff in June 2009, the Court declines to rule
5 on this matter in the abstract. Defendants will have to wait until trial to see what testimony is elicited
6 from Dr. Le and whether Plaintiff can establish the relevancy of that testimony.

7 **6. Loren Buddress: Processing, Filing and Storing Probation Materials**

8 Defendants seek to preclude Plaintiff's expert, Loren Buddress, from offering opinions at trial
9 regarding polices and/or procedures relating to the processing, filing, or storing of materials provided
10 by probationers to the Fresno County Probation Department, or any other probation department in the
11 State of California. Defendants argue two points in this regard. First, Defendants maintain that Mr.
12 Buddress' opinion that "there frequently can be periodic delays" in the processing, filing, and storing
13 of probation-related paperwork is speculative and lacks foundation. Second, Defendants contend that
14 Mr. Buddress' opinions are, in any event, irrelevant because the issue in this case is whether Officer
15 Alanis had actual knowledge of any deficiencies in the Fresno County Probation Department's record
16 system specifically. Defendants emphasize that Mr. Buddress' opinions say nothing about the state of
17 the County's records or Officer Alanis' actual knowledge.

18 This motion in limine is DENIED. Mr. Buddress indicated that he based his opinions on his 35
19 years of personal experience as a probation officer. To the extent that Defendants seek to point out the
20 limitations of Mr. Buddress' personal experience, that is a matter for cross-examination and does not
21 warrant legal preclusion at this time.

22 With respect to the relevancy of Mr. Buddress' opinions, it may be true that the issue in this
23 case is Officer Alanis' actual knowledge. But Plaintiff is not confined to Officer Alanis' testimony as
24 to what he did or did not know at the time of Plaintiff's arrest. Plaintiff may introduce circumstantial

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26 ² In order to ensure that Defendants are not harmed, any expert testimony Plaintiff seeks to elicit from
27 Dr. Khoi Le that goes beyond the scope of his treatment of Plaintiff shall be limited to whatever issues
28 were discussed during Dr. Khoi Le's deposition. See, e.g., McCloud v. Goodyear Dunlop Tires North
America, Ltd., No. 04-1118, 2007 U.S. Dist. LEXIS 61248, at *4-7 (C.D. Ill. Aug. 21, 2007) (curing
any failure to disclose by limiting party to expert's deposition testimony). Plaintiff must provide both
the Court and opposing counsel excerpts and designations of any such testimony.

1 evidence on this issue, and Mr. Buddress' testimony appears to be aimed at doing just that, at least to
2 some extent. See Fed. R. Evid. 401 ("Evidence is relevant if it has *any* tendency to make a fact more
3 or less probable than it would be without the evidence.") (emphasis added). Defendants will have to
4 argue to the jury what weight they should afford this testimony.

5 **7. Loren Buddress: Standard Practices of Probation Officers**

6 Defendants also seek to preclude Mr. Buddress from offering opinions at trial regarding any
7 materials, duties, or standard practices of probation officers in California that are not identified in Mr.
8 Buddress' expert report. Defendants stress that such opinions were never disclosed in Mr. Buddress'
9 Rule 26(a)(2)(B) expert report.

10 This motion in limine is DENIED for similar reasons discussed with respect to the motion to
11 exclude Dr. Khoi Le's opinions. Assuming that Mr. Buddress' opinions exceed those identified in his
12 expert report, the failure appears to be harmless. Defendants cross-examined Mr. Buddress on these
13 matters during the prior trial, and as a result, it is difficult to see how Defendants are now surprised by
14 Mr. Buddress' opinions. Defendants also have procured a witness, Michael Elliot, who is apparently
15 ready to counter Mr. Buddress' opinions. Lastly, the Court again notes that Defendants did not object
16 to Mr. Buddress' opinions during the prior trial and do not now offer any indication as to why or how
17 they have been harmed by the claimed deficiencies in Mr. Buddress' expert report.

18 Accordingly, Mr. Buddress will not be precluded altogether from offering opinions regarding
19 materials, duties, or standard practices of probation officers in California. However, similar to Dr. Le,
20 Mr. Buddress' opinions on this issue will be limited; if Mr. Buddress opines on this issue, his opinions
21 are limited to those that he offered in the last trial. Plaintiff must also provide the Court and opposing
22 counsel excerpts and designations of any such testimony.

23 **8. Loren Buddress: Arrest Procedures and Probable Cause**

24 Finally, Defendants seek to preclude Mr. Buddress from offering opinions or legal conclusions
25 relating to arrest procedures and/or probable cause. Defendants maintain that Mr. Buddress lacks the
26 necessary knowledge, skill, training, or education to offer opinions on these matters. Defendants also
27 argue that Mr. Buddress' definitions and opinions regarding probable cause are so inaccurate that they
28 will only confuse the jury.

1 As Plaintiff points out, this motion in limine is virtually identical to one the Court decided with
2 respect to the prior trial. (See Doc. 120 at 9-12.) The Court also agrees with Plaintiff that the Court’s
3 ruling then should apply with equal force now. Accordingly, the Court rules on this motion in limine
4 as follows.

5 First, to the extent that Defendants seek to preclude Mr. Buddress from testifying altogether on
6 the ground that he is not qualified, the motion in limine is DENIED. The fact that Mr. Buddress has
7 never physically effectuated an arrest for a probation violation does not necessarily mean that he lacks
8 knowledge, skill, training, or education in probation-related arrest procedures. The same is true to the
9 extent that Defendants attack the adequacy of Mr. Buddress’ knowledge, skill, training, or education
10 once he took on the role of a more supervisory probation officer. That is a matter going more toward
11 the credibility and weight of Mr. Buddress’ anticipated testimony, a matter that should be reserved for
12 the jury to decide.

13 Second, with respect to Mr. Buddress’ inaccurate definitions and opinions regarding probable
14 cause, this motion in limine is GRANTED as follows. Mr. Buddress is precluded from (1) defining
15 probable for the jury; (2) opining that the following factors are relevant to determining probable cause
16 for an arrest: Plaintiff’s employment status, Plaintiff’s potential for endangering the community in the
17 future, the “technicality” of Plaintiff’s probation violation, the reputation of Chief Deputy Probation
18 Officer Linda Penner, and jail overcrowding; and (3) opining whether or not Officer Alanis in fact had
19 probable cause to arrest Plaintiff. (See id. at 4-5, 9-12, 14-15.)

20 CONCLUSION

21 Counsel are expected to read these rulings, not reargue them at trial, and actually follow them. They
22 need no clarification. Failure to do so will result in on-the-spot, hefty sanctions. No exceptions.

23
24
25 IT IS SO ORDERED.

26 Dated: October 9, 2013

/s/ Lawrence J. O’Neill
UNITED STATES DISTRICT JUDGE